UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CHRIS KOHLER, Plaintiff, vs. THE VONS COMPANIES, INC., Defendant.	CASE NO. 08-cv-0082-IEG-RBB **ORDER GRANTING MOTION FOR ATTORNEYS' FEES** (Doc. No. 8.)

Presently before the Court is plaintiff Chris Kohler's motion for attorneys' fees. (Doc. No. 8.) On March 6, 2008, the Clerk of the Court entered judgment for plaintiff based on defendant's Offer of Judgment under Rule 68 of the Federal Rules of Civil Procedure. (Doc. No. 7.) Plaintiff filed the instant motion on March 20, 2008, and the Court now finds the matter fully briefed and amenable for disposition without oral argument pursuant to Local Civil Rule 7.1(d)(1). For the following reasons, the Court grants the motion and awards plaintiff $4,181.50 in attorneys' fees.

DISCUSSION

A. Legal Standard

Attorneys' fees are calculated using the "lodestar" formula by multiplying **(1)** the number of hours which would have been reasonably spent on the litigation by **(2)** a reasonable hourly rate. Fischel v. Equitable Life Assurance Soc'y of U.S., 307 F.3d 997, 1006 (9th Cir. 2002). There is a "strong presumption" that the lodestar fee is a reasonable fee. Id. at 1007. In rare cases this strong presumption may be rebutted through the application of those factors not subsumed in the lodestar calculation. Id.; see also Cunningham v. County of Los Angeles, 879 F.2d 481, 487 (9th Cir. 1988). "The amount of the fee award is within the discretion of the trial judge." Kessler v. Assocs. Fin. Servs. Co. of Haw., Inc., 639 F.2d 498 (9th Cir. 1981).

B. Statutory Entitlement to Fees

Plaintiff brought the instant case under the Americans with Disabilities Act (ADA). Federal law authorizes an award of reasonable attorney's fees and costs to the "prevailing party" in an ADA action. 42 U.S.C. § 12205. By accepting defendant's Offer of Judgment, plaintiff recovered monetary damages of $4,001. Defendant also agreed to injunctive relief. Accordingly, the parties agree plaintiff is the "prevailing party" in this case.

C. Reasonableness of the Requested Fee

Plaintiff requests $7,008.50 in fees and costs incurred in this case. These fees are supported by documentation that two lawyers and two paralegals worked a total of 23.75 hours, at billing rates from $90 to $350 per hour.

1. Reasonable Hourly Rate

A reasonable hourly rate is "calculated according to the prevailing market rates in the relevant community." Sorenson v. Mink, 239 F.3d 1140, 1145 (9th Cir. 2001) (quoting Blum v. Stenson, 465 U.S. 886, 895 (1984)). Plaintiff has the burden of producing evidence that the rates requested "are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." Sorenson, 239 F.3d at 1145; Jordan v. Multnomah County, 815 F.2d 1258, 1263 (9th Cir. 1987). This "initial burden" is not high when the evidence is not challenged by the opposing party. Mendenhall v. Nat'l Transp. Safety Bd., 213 F.3d 464, 472 (9th Cir. 2000).

Plaintiff requests rates of $350 per hour for Lynn Hubbard's time, $225 per hour for Scottlynn Hubbard's time, and $90 per hour for paralegal time. Defendant cites several cases from the Eastern District of California awarding this firm $250 per hour for Lynn Hubbard, $140 per hour for Scottlynn Hubbard, and $75 per hour for paralegals. Defendant argues the rates requested must be reasonable for the Eastern District of California because counsel's office is located in Chico, California. But the community where the court sits is the relevant market for determining reasonable fees. Gates v. Deukmejian, 987 F.2d 1392, 1405 (9th Cir. 1992). Accordingly, the Court rejects defendant's arguments that the rates must be reasonable for Chico, California.

Plaintiff has not provided evidence of rates for similar work in San Diego, and the Court must thus rely on its own knowledge of reasonable rates. Agster v. Maricopa County, 486 F. Supp. 2d 1005, 1014 (D. Ariz. 2007). In past years, courts in this district have awarded fees in ADA litigation at $325 and $300 per hour, slightly lower rates than counsel requests in this case. See Jones v. Wild Oats Markets, Inc., 467 F. Supp. 2d 1004, 1015 (S.D. Cal. 2006) (awarding defendants' counsel in ADA case $325 per hour in 2006); Feezor v. Del Taco, Inc., No. 04-0097 J, 2005 WL 3619388 (S.D. Cal. June 23, 2005) (awarding Mr. Hubbard his requested rate of $300/hour in 2005). An increase of $25 per hour over two years is appropriate in this district. Cf. Friend v. Kolodzieczak, 72 F.3d 1386, 1391 n.5 (9th Cir. 1995) (finding an increase in rates "reasonable in view of inflation and rising cost of legal services over the past three years"). Accordingly, the Court finds the requested rates reasonable.

2. Reasonable Hours

The documentation submitted by plaintiff's counsel reports 17.55 hours of attorney time on the case and 6.2 hours of paralegal time. Defendant argues several of the time entries are unreasonable and thus the Court should not award the entire amount of requested fees.

a. Adjustments to Paralegal Time

Defendant challenges certain clerical tasks performed by the paralegals. On January 7, 2008, paralegal Kaina Schukei billed 0.4 hours for creating a client file. On February 12, 2008, she billed 0.3 hours for updating the file with the contact information of defendant's attorney and reviewing the case file. The Court agrees these are clerical tasks which are not properly billed at paralegal rates. E.g., Keith v. Volpe, 644 F. Supp. 1312, 1316 (C.D. Cal. 1986) (reducing claimed time by "hours for time spent on filing, document organization and other clerical matters that should be covered in hourly rates for normal overhead"). Ms. Schukei also billed 0.4 hours on March 13, 2008, after the entry of judgment, for time spent on e-mail correspondence regarding a meeting at the site. The Court finds this activity was unreasonable as the case was closed and the only remaining matter was the instant motion.

b. Adjustments to Attorney Time

The Court also will make several adjustments to the attorney's hours expended. Lynn Hubbard states his travel rate is $175 per hour. (Hubbard Decl. ISO Motion at 3.) Mr. Hubbard's description in one billing entry includes "travel" and other activities, but the entire time for that entry (three hours) was billed at his non-travel rate of $350 per hour. The Court is unable to determine how much of this time was travel and thus should have billed at the lower rate. Lynn Hubbard also billed another three hours for site inspection several days later. This appears to be entirely duplicative of the previous visit. Accordingly, the Court will award a total of $350 per hour for three hours for the first site visit, and no fees for the second visit.

Defendant also argues the preparation of the instant motion would not reasonably take 4.35 hours, given the brevity of the motion and the boilerplate nature of the declaration supporting the motion. The Court agrees. The information contained in the declaration in support of the motion is not specific to this case and counsel has filed hundreds of similar cases. The Court therefore finds counsel could only have reasonably spent two hours of attorney time on this motion.[1] The Court also reduces the time spent on the Bill of Costs, which only listed two expenses, from 1.6 hours to 0.25 hours.

In total, the Court reduces the claimed hours worked by Lynn Hubbard from 16.95 to 10.25, eliminating 6.7 hours which were not reasonably expended. The Court will not adjust the hours expended by Scottlynn Hubbard, which total 0.6 hours.

3. Summary

The Court finds Lynn Hubbard reasonably expended 10.25 hours at an hourly rate of $350 per hour, Scottlynn Hubbard reasonably expended 0.6 hours at an hourly rate of $225 per hour, and the paralegals reasonably expended 5.1 hours at an hourly rate of $90 per hour. Accordingly, the fees total $4,181.50.

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[1] Plaintiff's reply misapplies the law regarding attorneys' fees. Plaintiff argues the lodestar calculation is presumptively reasonable and thus should only be adjusted in "rare and exceptional cases." See Reply at 2 (citing Fischer v. SJB-P.D., Inc., 214 F.3d 1115, 1119 (9th Cir. 2000)). This is correct. But the lodestar amount is only reached by multiplying reasonable hours worked by a reasonable rate. The Court must scrutinize the reasonableness of hours worked before it reaches the "presumptively reasonable" lodestar figure. See Fischel, 307 F.3d at 1006.

D. Lodestar Adjustments

The lodestar figure may be adjusted based on factors not subsumed in the lodestar calculation. Fischel, 307 F.3d at 1007. Neither party suggests increasing or decreasing the lodestar, and the Court finds no adjustment is appropriate in this case.

E. Costs

Plaintiff requests reimbursement for litigation costs and expenses totalling $383. As defendant notes, the Clerk of the Court has already taxed defendant with plaintiff's costs in that amount. (Doc. No. 12.) Accordingly, the Court will not duplicate the costs already awarded.

CONCLUSION

For the foregoing reasons, the Court GRANTS plaintiff's motion. Plaintiff is awarded attorneys' fees in the amount of $4,181.50. The Clerk of the Court is ordered to enter judgment for plaintiff in this amount.

IT IS SO ORDERED.

DATED: May 29, 2008

IRMA E. GONZALEZ, Chief Judge
United States District Court